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Attorneys for Plaintiff MYRICK TANTIADO

UNITED STATES DISTRICT COURT

FOR THE NORTHER DISTRICT OF CALIFORNIA

MYRICK TANTIADO, an individual,

Plaintiff,

vs.

POWER MEDICAL INTERVENTIONS, a
Pennsylvania corporation, and DOES ONE
through FIFTY, inclusive,

Defendants.

Case No. C 07-02874 CRB MED

**PLAINTIFF'S ACCEPTANCE OF
DEFENDANT POWER MEDICAL
INTERVENTIONS, INC.'S OFFER OF
JUDGMENT ON COUNT II ONLY
PURSUANT TO F.R.C.P. RULE 68**

Original filing date: April 6, 2007

Removal date: June 1, 2007

Plaintiff accepts defendant Power Medical Interventions, Inc.'s offer to allow judgment to be entered against Power Medical Interventions, Inc. on Count II, Violation of Labor Code Sections, and requests that the District Court enter such judgment on Count II only, in accordance with Federal Rule of Civil Procedure 54(b). Plaintiff's acceptance of the offer to allow judgment on Count II, Violation of Labor Code Sections, does not include acceptance of the term "contingent on all claims against PMI on Count II of the Complaint being dismissed

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POWER MEDICAL INTERVENTIONS, INC.'S
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with prejudice by Plaintiff upon acceptance of this Offer of Judgment” because that contingency is logically inconsistent with the Offer of Judgment (which presupposes the entry of judgment on Count II, leaving nothing remaining of Count II for plaintiff to dismiss) and is also legally impermissible under Federal Rule of Civil Procedure, Rule 68. Thus, by accepting this offer, plaintiff is not agreeing to dismiss or otherwise waive his right to collect his reasonable costs and attorneys’ fees, which are recoverable incident to the judgment entered in his favor on Count II.

Dated: August 18, 2008

By: 
 MARK L. MOSLEY
 STEPHEN F. HENRY

Attorneys for Plaintiff

PROOF OF SERVICE

I, Omar Lateef, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. My business address is Moscone, Emblidge & Quadra, LLP, 220 Montgomery Street, Suite 2100, San Francisco, California 94104.

On August 18, 2008, I served the attached:

PLAINTIFF'S ACCEPTANCE OF DEFENDANT POWER MEDICAL INTERVENTIONS, INC.'S OFFER OF JUDGMENT ON COUNT II ONLY PURSUANT TO F.R.C.P. RULE 68

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

John Duke, Esq.
Foley Hoag LLP
Seaport World Trade Center West
155 Seaport Boulevard
Boston, MA 02210-2600

and served the named document in the manner indicated below:

☒ **BY MAIL:** I caused true and correct copies of the above document(s) to be served by mail on the above date by personally placing and sealing said document(s) in an envelope or package suitable for mailing, addressed to the addressee(s) and including this firm's return address, and then, following ordinary office practice, placing said sealed envelope in the office's usual location for collection and mailing with the United States Postal Service.

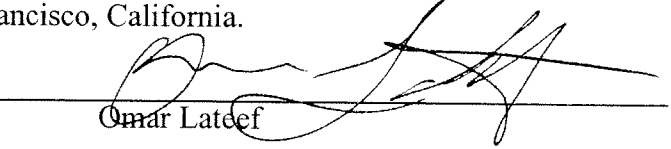
☐ **BY NEXT-DAY OVERNIGHT SERVICE:** I caused true and correct copies of the above document(s) to be placed within a sealed envelope or other package suitable for overnight shipment, addressed to the addressee(s) and including this firm's return address, and delivered on the date stated above to an overnight delivery service for delivery to the addressee(s) on the following business day.

☐ **BY HAND DELIVERY:** I caused true and correct copies of the above document(s) to be placed within a sealed envelope or other package suitable for handling by a messenger or courier service and then caused the package to be hand-delivered by a same-day messenger service to the addressee(s) on this date.

☒ **BY FACSIMILE:** I caused true and correct copies of the above document(s) to be sent via facsimile to the addressee(s) on this date. The facsimile machine used complies with California Rule of Court 2003(3) and no error was reported by the sending facsimile machine. The transmission record for this facsimile complies with California Rule of Court 2003(6).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed August 18, 2008, at San Francisco, California.


Omar Lateef